IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

CRL.A.No. 1492 of 2004(C)

SC.45/2004 of ADDL. SESSIONS JUDGE (ADHOC II) THODUPUZHA
CP.1/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THODUPUZHA.
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APPELLANT: PETITIONER.

HUSSAIN @ KAREEM, CONVICT NO.1147,
CENTRAL PRISON, KANNUR.

BY ADV. SABINA JAYAN (STATE BRIEF)

RESPONDENTS: COMPLAINANT.

STATE OF KERALA, C.I.OF POLICE,
RAJNAR.

BY PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN,JJ.

Crl.A.No.1492 OF 2004

Dated 18th January, 2007

JUDGMENT

Koshy,J.

Appellant who was convicted for the murder of his wife and daughter was sentenced to under go imprisonment for life. According to the prosecution, he purchased five litres of kerosene on 26.7.2003 from a ration shop situated at Pannimattam and kept in the bed room of his house and during night at about 11 p.m. he poured kerosene all over the body of his wife Asiya and daughter Sumayya and lighted fire with a match stick with the intention and knowledge that it will cause their death. Asiya, the wife of the accused, and Sumayya, the daughter of the accused, sustained severe burn injuries on their body. Sumayya died due to those burn injuries while she was in the Child Health Institute, Kottayam at about 10 a.m. on 29.7.2003 and Asiya died due to burn injuries on 30.7.2003 at about 5.30 p.m. PW1, father of the deceased Asiya gave Ext.P1 F.I. Statement. He was residing about one kilometre away from the house of the accused. According to PW1, accused was an alcoholic and he often created quarrels in the house with his wife and children. On the fateful day, he poured kerosene all over the body of Asiya and her daughter Sumayya and set them on fire. He came to know about the incident on the information given by somebody residing very near to his house and immediately he rushed to

the house of the accused. He saw Sumayya lying very near to a Canal situated on the side of the house of the accused. She was lying naked with burn injuries all over the body. Immediately she was taken to the Chazhikattu Hospital, Thodupuzha. He further deposed that his daughter Asiya was lying on the courtyard of the house. She was also found with burn injuries all over the body. She was naked except a kaily on her legs and she was also taken to the Chazhikattu Hospital Thodupuzha in another jeep with the help of others. Thereafter, Sumayya was admitted in the CHI Hospital, Kottayam, whereas Asiya was admitted in the Medical College Hospital, Kottayam. PW1 stated that on the way to hospital Asiya, his daughter, stated to him that the accused poured kerosene all over her body and on the body of Sumayya and set them on fire. He also stated that because of the frequent trouble created by the accused in the house, the eldest daughter of the accused was residing with him. PW2 is the eldest daughter of the accused. She also deposed that she was residing with PW1 because of the continues trouble created by her father. She stated that the accused used to threaten them to kill. PWs 3 to 7 are neighbours who assembled in the house of the accused on 26.7.2003 knowing the alleged incident. PW3 is the next door neighbour of the accused. He saw the flames of fire

in the house as well as loud noise. Immediately he rushed to the scene and found Sumayya lying on the side of Canal with burn injuries and Asiya lying in the courtyard with burn injuries. The accused was also present in the house. When PW3 asked, Sumayya told him that her father set fire on her after pouring kerosene. Asiya also told him that she was set fire at the instance of the accused. He telephoned others and immediately PWs 6 and 7 came there with their jeeps. Sumayya was taken in the jeep of PW6 whereas Asiya was taken in the jeep of PW7. Those facts are stated by PWs 6 and 7 also. PW6 asked Sumayya as to what happened while she was being taken in his jeep. She told that accused set her on fire. Similarly, PW7 also was told by Asiya that her husband set her on fire. PW7 took accused also to the hospital as the accused also sustained burn injuries on his hands. Though declared hostile, PWs 4 and 5 neighbours stated that there were frequent quarrels in the house of the accused. PW9 is the sister of Asiya who was attending her in the Medical College Hospital. A dying declaration was made by Asiya to her also that she and her daughter were inflicted with burn injuries by the accused. She further stated that Asiya was conscious till her death. Similar is the deposition of PW11, brother of Asiya, who visited her before her death.

2. PW16, Assistant Professor Paediatric Surgeon, Medical College Hospital, Kottayam examined Sumayya and Ext.P7 wound certificate was issued. The alleged cause of injury was stated as `setting fire by the father'. It is stated in the wound certificate as follows:

(as stated by the child). It is also stated that even though there were 100% injuries, the child was well oriented. The statement given to the doctor shows that the statement was summarized by the doctor and the child was well oriented. Even if Ext.P7 is ignored as it is dying declaration given by a child who sustained 100% burn injuries, dying declaration given by wife of the accused cannot be ignored. PW21 doctor examined Asiya, wife of the accused, and issued Ext.P13 certificate. In Ext.P13 wound certificate also it is stated that burn injuries were caused by her husband by pouring kerosene and setting fire. Cause of injury is stated as follows:

The accused himself sustained injuries as the child immediately climbed on him and accused himself stated before the doctor as follows:

So, the case of the accused before the doctor was that for a joke when he poured kerosene and set fire to his own wife, the burn injuries were caused to him also. PW21 doctor in very clear terms deposed the above before the court. Apart from that, Judicial First Class Magistrate (PW17) was called to take the dying declarations of Asiya and Sumayya. Exts.P8 and P9 are the dying declarations of Asiya and Sumayya. Ext.P8 would show that before taking dying declaration, he got certificate from the doctor that Asiya was well oriented even though her condition was critical and very clearly stated that injuries were caused because her husband set fire after pouring kerosene on her and child. Her dying declarations given before the Magistrate, doctor, PW1 and other witnesses were consistent, cogent and trustworthy and is clearly admissible under Section 32 of the Indian Penal Code. (See **Muthukutty & another** v. **State by Inspector of Police, Tamil**

Nadu (2004 AIR SCW 7396). The child was semi-conscious and was able to speak and the child also gave Ext.P9 dying declaration with the same effect. So, the dying declarations given to various persons are consistent and there is nothing to disbelieve the consistent dying declarations given by the deceased, i.e., wife of the accused and 12 year old child. Even though the accused completely denied the incident, in the 313 statement when he was asked about the sentence, he stated that he should be sent to the jail at Kannur because his father and mother are residing near Kannur. There is no dispute that postmortem certificate is consistent with the death due to burn injuries as alleged. The totality of the evidence adduced in this case as well as dying declarations would prove the guilt of the accused conclusively. There is no case for the appellant that he was suffering from any mental disease and there is no evidence to show that he was treated for mental disease, but, the only case is that he was an alcoholic. However, there was no case that somebody has administered alcohol to him. We fully agree with the findings of the trial Judge. Only a lesser punishment of imprisonment for life under Section 302 IPC was imposed on

the accused and no interference is required in the conviction and sentence passed by the Trial Court.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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